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HAROLD B. WILLEY, C

In the

Supreme Court of the United States

No. 854

AUBREY AEBY and NORENE AEBY,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITIONERS' MOTION FOR REHEARING

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In the

Supreme Court of the United States

No. 354

AUBREY AEBY and NORENE AEBY,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITIONERS' MOTION FOR REHEARING

Now comes Aubrey Aeby and Norene Aeby, Petitioners, and file this their Motion for Rehearing and respectfully say to the Court in support of said Motion as follows:

Petitioners pray that the Order of this Honorable Court denying their Petition for Certiorari, made on the 16th day of November, 1953, be set aside and that the Court after due and further consideration of their case enter an Order granting their said Petition and review their judgment of conviction.

Petitioner Norene Aeby does not bring forth new matter but still urges the matters she gave in her Petition as reasons for allowance of the Writ of Certiorari.

Petitioner Aubrey Aeby, in addition to the reasons assigned in his Petition for Certiorari, says that this Court can and ought to grant his petition because he is being deprived of his liberty contrary to the previous decisions of this Court in like cases. In this connection Petitioner must again direct this Honorable Court's attention to the Statement of Facts. It is most earnestly urged here that his conviction is not supported in the evidence. It is most sincerely and earnestly urged here that the jury verdict was without evidence to support it and that the judgment affirming the case, rendered by the United States Court of Appeals was erroneous. Petitioner again directs this Honorable Court's attention to the dissenting opinion by Chief Judge Hutcheson and, we quote:

> HUTCHESON, Chief Judge, concurring in part and dissenting in part:
>
> "I concur in the opinion and in the judgment of affirmance as to appellant Norene Aeby. I dissent from it as to Appellant Aubrey Aeby.
>
> "As I read the record, all of the direct, and every tendency of the circumstantial, evidence points conclusively to Norene's guilt. Not a syllable of the direct, and not a single shred of the circumstantial, evidence points to Aubrey's.
>
> "Where, as here, a conviction calls for an automatic twenty-year sentence, courts should at least be certain that the conviction rests on evidence and not on mere conjecture. Believing that the judgment should be reversed as to appellant Aubrey Aeby for want of evidence to sustain the conviction, I respectfully dissent from its affirmance as to him."

Petitioner says that unless this Court grants him relief he will have to serve a sentence of 20 years in the penitentiary, convicted of an offense of which he is not guilty and of which no evidence was produced before the jury to support the verdict of guilty.

This Court has always reviewed cases where the sufficiency of the evidence is in question, even though both the trial court and the Court of Appeals have found adversely to the defendant. The power, authority and custom of this Court to examine the facts to ascertain the sufficiency thereof to support a conviction is so well settled, there is no necessity to cite authorities.

CONCLUSION

Petitioner Aubrey Aeby pleads most earnestly with this Honorable Court TO AGAIN EXAMINE THE EVIDENCE IT THIS CASE and he verily believes when the Court again examines the record, it will then be convinced that the evidence is wholly insufficient to support his conviction and that the Writ of Certiorari will be granted.

Respectfully submitted,

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